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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,178	08/25/2003	Richard Andrew Schelle		1530

7590 12/28/2004

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EXAMINER	
PARSLEY, DAVID J	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

[redacted]

Office Action Summary	Application No.	Applicant(s)	
	10/647,178	SCHELLE ET AL.	
	Examiner	Art Unit	
	David J Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 August 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 August 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is not on a separate page.

Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: it does not contain reference numerals indicating the components of the invention in the drawings.

Appropriate correction is required.

Drawings

4. Color photographs and color drawings are acceptable only for examination purposes unless a petition filed under 37 CFR 1.84(a)(2) is granted permitting their use as acceptable drawings. In the event that applicant wishes to use the drawings currently on file as acceptable drawings, a petition must be filed for acceptance of the color photographs or color drawings as acceptable drawings. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

> The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings have been satisfied.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include any reference signs indicating the particular components of the invention discussed in the disclosure. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

6. Claims 1-8 are objected to because of the following informalities: the term "Chum Tube Lure" as seen in each of claims 1-8 should contain all lower case letters. If this term is a trademark than it should be replaced with generic language. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "said hole angled up from the front to back" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,133,134 to Cheng.

Referring to claim 1, Cheng discloses a line and reel system lure comprising, chum tube means – at 23, to load and hold fish oil attractant for a controlled release of the fish oil attractant – see for example figures 1-6 and columns 4-5, means – at 14,15 or the fishing line (not shown) connected at – 12, coupled to the chum tube for trolling deeper, means – at 12, coupled to the output of the chum tube means for rotating the lure and receiving fish oil attractant over the lure – see for example figures 1-6.

Referring to claim 2, Cheng discloses the chum tube means comprises lead head means – at 14 or 15, with a hole – see figures 1-3, for loading fish oil attractant – see for example figures 1-6.

Referring to claim 4, Cheng discloses the lead head means – at 14, comprises an eye – see at 12, at the front and top to keep the chum tube means upright when trolled – see for example figures 1-6.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng as applied to claim 2 above, and further in view of U.S. Patent No. 2,968,886 to Cotroumpas.

Referring to claim 3, Cheng discloses the lead head means – at 14 or 15, provides a deeper depth at which the lure is trolled – see for example figures 1-6. Cheng does not disclose the lead head means has a hole angled up from the front to the back. Cotroumpas does disclose a head means – at 95, having a hole angled up from the front to the back- see at 97. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cheng and add the head means with angled hole of Cotroumpas, so as to allow for fluid to be forcefully ejected from the hole.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng as applied to claim 2 above, and further in view of U.S. Patent No. 6,789,349 to Stone. Cheng does not disclose a three-inch long piece of rope to absorb and control the release of the attractant. Stone does disclose a rope – at 11 or 11'', to absorb and control the release of the attractant – see for example figures 1-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cheng and add the rope to control release of the attractant of Stone, as to allow for the attractant to be longer lasting and not wasted. Cheng as modified by Stone does not disclose the rope is 3 inches, however it would have been obvious to one of ordinary skill in the art to make the rope 3 inches, so as to facilitate the rope extending into and out of the lure body.

Further, applicant's disclosure places no criticality on the dimension of the rope being 3 inches in length.

Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng as applied to claim 1 above.

Referring to claim 6, Cheng discloses the chum tube means comprises a dowel – at 15, with an offset hole – see figures 1-6, to seal the back end of the chum tube and also control the release of the fish oil attractant – see for example figures 1-6. Cheng does not disclose a ¾ inch wood dowel, however it would have been obvious to one of ordinary skill in the art to use a ¾ inch wood dowel on the device of Cheng, so as to make the device lightweight.

Referring to claim 7, Cheng discloses the dowel means – at 15, with offset hole causes the lure to swing erratically – see for example figures 1-6 and columns 4-5.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng as applied to claim 1 above, and further in view of U.S. Patent No. 6,763,631 to Santini. Cheng does not disclose a barrel swivel for rotating the lure. Santini does disclose a barrel swivel – at 12 or 30, to rotate the lure. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cheng and add the barrel swivel of Santini, so as to allow for the lure to be movable into different positions to attract fish.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to scent dispensing devices used for fishing in general:

U.S. Pat. No. 1,561,512 to Fredricks – shows tubular lure device

U.S. Pat. No. 3,084,471 to Alspaugh – shows scent-dispensing device

U.S. Pat. No. 3,680,249 to Chiarenza – shows tubular lure device

U.S. Pat. No. 3,965,606 to Bingler – shows tubular lure device

U.S. Pat. No. 4,211,027 to Viscardi – shows tubular lure device

U.S. Pat. No. 4,253,263 to Franklin et al. – shows tubular lure device

U.S. Pat. No. 4,520,588 to Hindermyer – shows scent-dispensing device

U.S. Pat. No. 4,602,453 to Polley – shows tubular scent dispensing device

U.S. Pat. No. 4,777,757 to de Marees van Swinderen – shows scent dispenser

U.S. Pat. No. 4,858,368 to Tolner et al. – shows tubular lure device

U.S. Pat. No. 4,888,907 to Gibbs – shows scent-dispensing lure

U.S. Pat. No. 5,349,777 to Pallay et al. – shows scent-dispensing lure

U.S. Pat. No. 5,581,933 to Bommarito – shows scent-dispensing lure

U.S. Pat. No. 6,675,525 to Ford – shows scent-dispensing lure

U.S. Pat. No. 6,779,293 to Rice – shows scent-dispensing lure

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Parsley
Patent Examiner
Art Unit 3643

PETER M. POON
SUPERVISORY PATENT EXAMINER
12/21/04

[redacted]

It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

CERTIFICATE OF MAILING

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

> I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on (date).
>
> (Typed or printed name of the person signing this certificate)
>
> (signature)

CERTIFICATE OF TRANSMISSION

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

> I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)___-____on (date).
>
> (Typed or printed name of the person signing this certificate)
>
> (signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted.
For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.
In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

NOTICE TO APPLICANT: In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.